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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AYDE AZUCCERA PEREZ GUTIERREZ;
BRENDA KARLA GABRELA REYES
MEDRANO; ADRIANA TORRES; ERIKA
SOCORRO VALLE PERALTA; SALVADOR
VLADIMIR JIMENEZ FLORES; and
VIRIDIANA RAMIREZ RODRIGUEZ,

Plaintiffs,

vs.

MARISCOS EL PUERTO, INC.; LA
CATRINA, LLC; LA CATRINA
ENTERTAINMENT, LLC; MANUELA
HERNANDEZ; JULIAN HERNANDEZ;
HECTOR MORENO; and DANNY
HERNANDEZ,

Defendants.

CASE NO.: 2:19-cv-1940

COLLECTIVE ACTION COMPLAINT

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Plaintiffs Ayde Azuccera Perez Gutierrez (“Gutierrez”); Brenda Karla Gabrela Reyes Medrano (“Medrano”); Adriana Torres (“Torres”); Erika Socorro Valle Peralta (“Peralta”); Salvador Vladimir Jimenez Flores (“Flores”); and Viridiana Ramirez Rodriguez (“Rodriguez”)

(collectively, “Lead Plaintiffs”), individually and on behalf of all others similarly situated, allege for their Collective Action Complaint against Defendants Mariscos El Puerto, Inc. (“Mariscos”); La Catrina, LLC (“La Catrina”); La Catrina Entertainment, LLC (“LCE”); Manuela Hernandez (“Manuela”); Julian Hernandez (“Julian”); Hector Moreno (“Hector”), and Danny Hernandez (“Danny”) (collectively, “Defendants”), upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by their attorneys, as follows:

2. The Lead Plaintiffs are, or were, workers employed by the Defendants as part of their bar and restaurant business operation commonly known as La Catrina Bar & Grill and Mariscos El Puerto, located at 1901 N. Decatur Blvd., Las Vegas, NV 89108, and 1905 N. Decatur Blvd., Las Vegas, NV 89108 (“the Restaurant”). All Lead Plaintiffs were or are employed in positions that are not exempt from the minimum wage or overtime provisions of the Fair Labor Standards Act (“FLSA”) and Nevada law.

3. The Defendants willfully failed to pay the Lead Plaintiffs and other similarly situated employees their minimum wages and overtime wages, as well as otherwise engaging in grossly unlawful and criminal activities against the Lead Plaintiffs, such as sexual harassment, battery, assaults, rapes, defamation, intentional infliction of emotional distress, retaliation, civil conspiracy, defamation, public disclosure of private facts, and many others.

4. The Defendants’ practices are in direct violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the Nevada wage and hour laws. By way of this lawsuit, the Lead Plaintiffs seek compensation and credit for all uncompensated work required or permitted by the Defendants,

1 liquidated damages, punitive damages, attorney fees and costs, and an injunctive relief against
2 further unlawful actions.¹

3
4 **II.**

5 **JURISDICTION**

6
7 5. This action arises under the statutes of the United States for violation of the Fair Labor
8 Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*

9
10 6. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because
11 this matter arises as a result of alleged violations of federal law.

12 7. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs’
13 Nevada wage claim and common law claims as they form part of the same case or controversy.

14 8. Pursuant to 29 U.S.C. § 216(b), this Court has jurisdiction over this matter as an action
15 brought by the Lead Plaintiffs as individuals and as a Collective Action brought on behalf of all
16 current and former similarly situated employees of the Defendants.

17
18 9. Venue is proper under 28 U.S.C. § 1391 insofar as a substantial part of the events or
19 omissions giving rise to the Lead Plaintiffs’ claims occurred in the District of Nevada. Further,
20 venue is proper because the Defendants do business in Nevada.

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¹This lawsuit does not involve the Lead Plaintiffs’ claims for sexual discrimination as such
28 claims are subject to parallel administrative proceedings.

III.

PARTIES

10. Plaintiff Gutierrez is a resident of Las Vegas, Nevada. Ms. Gutierrez was employed by the Defendants from approximately May 2015 to September 2019 when she was fired for refusing sexual advances from Defendants Danny and Hector. Ms. Gutierrez worked as a busser and waitress for the Defendants. Ms. Gutierrez worked hours in excess of forty (40) hours per week without receiving minimum wages and overtime compensation as required under both Nevada and federal law.

11. Plaintiff Medrano is a resident of Las Vegas, Nevada. Ms. Medrano was employed by the Defendants from approximately November 2017 to September 2019 when she was fired for refusing sexual advances from Defendant Hector. Ms. Medrano worked as a waitress for the Defendants. Ms. Medrano worked hours in excess of forty (40) hours per week without receiving minimum wages and overtime compensation as required under both Nevada and federal law.

12. Plaintiff Torres is a resident of Las Vegas, Nevada. Ms. Torres has been employed by the Defendants from approximately February 2016 to the present time. Ms. Torres is constantly subject to sexual harassment from the Defendants. Ms. Torres works as a waitress for the Defendants. Ms. Torres has worked, and still works, hours in excess of forty (40) hours per week without receiving minimum wages and overtime compensation as required under both Nevada and federal law.

13. Plaintiff Peralta is a resident of Las Vegas, Nevada. Ms. Peralta has been employed by the Defendants from approximately February 2015 to the present time. Ms. Peralta is constantly subject to sexual harassment from the Defendants. Ms. Peralta works as a waitress for the

1 Defendants. Ms. Peralta has worked, and still works, hours in excess of forty (40) hours per week
2 without receiving minimum wages and overtime compensation as required under both Nevada
3 and federal law.

4 14. Plaintiff Flores is a resident of Las Vegas, Nevada. Mr. Flores has been employed by the
5 Defendants from approximately March 2016 to the present time. Mr. Flores works as a busser for
6 the Defendants and is constantly subject to sexual harassment from the Defendants based on his
7 sexual orientation. Mr. Flores has worked, and still works, hours in excess of forty (40) hours per
8 week without receiving minimum wages and overtime compensation as required under both
9 Nevada and federal law.
10

11 15. Plaintiff Rodriguez is a resident of Las Vegas, Nevada. Ms. Rodriguez was employed by
12 the Defendants from approximately March 2016 to the present time. Ms. Rodriguez works as a
13 cook for the Defendants and is constantly subject to sexual harassment and physical violence from
14 the Defendants because of her sexual orientation.
15

16 16. Defendant Mariscos is a Nevada corporation wholly owned and controlled by Defendants
17 Manuela, Julian, Hector, and Danny, and all are engaged in the operation of the Restaurant.
18

19 17. Defendant La Catrina is a Nevada limited liability company directly controlled by
20 Defendants Manuela, Julian, Hector, and Danny, and all are engaged in the operation of the
21 Restaurant.
22

23 18. Defendant LCE is a Nevada limited liability company directly controlled by Defendants
24 Manuela, Julian, Hector, and Danny, and all are engaged in the operation of the Restaurant.
25

26 19. Defendant Manuela is a resident of Nevada and an officer and the president of Mariscos
27 and La Catrina. Upon information and belief, she holds a significant ownership interest with
28 significant operational control of LCE.

1 20. Defendant Julian is a resident of Nevada and a manager of Mariscos, La Catrina, and LCE.
2 Upon information and belief, he holds a significant ownership interest with significant operational
3 control of Mariscos, La Catrina, and LCE.

4 21. Defendant Hector is a resident of Nevada and a managing member of LCE and a manager
5 of Mariscos and La Catrina. Upon information and belief, he holds a significant ownership interest
6 with significant operational control of Mariscos, La Catrina, and LCE.
7

8 22. Defendant Danny is a resident of Nevada and a manager of Mariscos, La Catrina, and
9 LCE. Upon information and belief, he holds a significant ownership interest with significant
10 operational control of Mariscos, La Catrina, and LCE.
11

12 23. At all relevant times, the Defendants employed the Lead Plaintiffs jointly, as this term is
13 used under the FLSA and Nevada law, and each of them exercised control over the nature and
14 structure of their employment. Specifically, without limitation, each of the Defendants had the
15 power to hire and fire each of the Lead Plaintiffs and to determine the condition of their
16 employment, such as the amount of their wages, job duties, work schedules, discipline, and other
17 job-related matters.
18

19 24. The Defendants individually, through their substantial and significant involvement and
20 contacts with the Lead Plaintiffs and other employees, are covered employers as defined by the
21 FLSA and the Code of Federal Regulations, and therefore are subject to the provisions of the
22 FLSA.
23

24 25. The Defendants collectively, through their substantial and significant involvement and
25 contacts with the Lead Plaintiffs and other employees, are covered employers as defined by the
26 FLSA and the Code of Federal Regulations, and therefore are subject to the provisions of the
27 FLSA and other relevant laws.
28

IV.

GENERAL ALLEGATIONS

26. The Defendants are engaged in the business operation of the Restaurant.

27. In the course of their business, the Defendants hired the Lead Plaintiffs to perform various functions at the Restaurant, such as bussers, cooks, and/or waitresses.

28. The majority of the Defendants' employees, including the Lead Plaintiffs, were and are commonly referred to and classified by Defendants as "day-rate" employees who are designated to receive day-rate compensation for any and all days suffered or permitted to work by the Defendants. Their compensation depends upon the number of days worked in a given workweek, but usually amounts to \$50 a day.

29. The majority of the Defendants' employees work anywhere between 8-14 hours a day, 5-7 days a week.

30. Under the FLSA, covered employees are required to receive a minimum wage of \$7.25 per hour.

31. Under Nevada law, covered employees are required to receive a minimum wage of \$8.25 per hour.

32. Under the FLSA, covered employees are required to receive an overtime hourly wage at a rate of 1½ times their normal hourly rate for hours worked in excess of 40 hours during each and every workweek, unless they qualify for a specific exemption contained in the FLSA.

33. Under the FLSA and Nevada law, employers are required to keep timekeeping records that accurately reflect all hours worked by each employee and the compensation they received.

34. The FLSA also prohibits discrimination or retaliation against any covered employee (including former employees) for attempting to assert his or her rights under the statute.

1 35. The day-rate employees of the Defendants do not rightfully qualify for any of the
2 exemptions found in the FLSA or Nevada law, and therefore must be legally paid an hourly rate
3 of at least \$8.25 per hour and overtime hourly wage for all hours worked in excess of 40 hours
4 during each and every workweek.

5 36. The Defendants consciously implemented a system of coercion, deception, and violence
6 aimed at denying employees their rights to minimum wage and overtime pay while forcing them
7 to work an excessive number of hours without pay.
8

9 37. This system consisted of, *inter alia*, forcing employees to work for free during their
10 “training” sessions; destroying the employees’ time cards and falsifying records; charging
11 employees for customers’ mistakes; threatening employees with violence and sexual abuse;
12 threatening employees with deportation or being taken “to the desert”; threatening the families
13 of the employees; sexual abuse; and many others.
14

15 38. Every week such employees would receive either cash or a paycheck that did not specify
16 the hours or days worked during each week, or even a classification of such employees.
17

18 39. Yet, despite the fact that the paycheck did not specify the amount of time worked by each
19 employee, it was the Defendants’ company-wide policy that most of the employees made a day-
20 rate and that any absence of a given day would result in denial of pay.

21 40. Indeed, for any workweek that the Lead Plaintiffs worked fewer days than their required
22 quota, even if such an absence was necessitated by the Defendants’ operating requirements, the
23 Defendants deducted pay from the Lead Plaintiffs’ paychecks accordingly.
24

25 41. Defendants did not maintain timekeeping records documenting the actual hours worked
26 by the Lead Plaintiffs and other similarly situated day-rate employees.
27
28

1 42. Very often the Defendants forced their employees to work 6-7 days a week for 10-14
2 hours a day without overtime pay at the rate of \$50 per day.

3 43. In addition, each time a female employee would bring a question of pay or the conditions
4 of his or her employment to the Defendants, she was instantly intimidated to withdraw her
5 demands by being called a “bitch,” “whore,” and “stupid idiot worth a dick,” among many others.
6

7 44. Instead of addressing the employees’ demands, the Defendants implemented a system of
8 physical and emotional coercion, sexual abuse, and threats.

9 45. It was specifically one of the requirements of the job to have sexual intercourse with
10 Hector in order to be treated equally to others.

11 46. If a female employee refused Hector’s sexual demands, she would be punished by threats,
12 violence, intimidation, and being removed from the schedule.
13

14 47. In addition, the employees were constantly reminded about their economic dependence
15 on the Defendants and threatened by the alleged might and influence of Hector, who supposedly
16 knows “everybody,” including members of Mexican cartels who stand ready to take unruly
17 employees “to the desert.”
18

19 48. Employees were also reminded that they were bound by “contracts” that purportedly
20 require them to work for \$50 per day without overtime and regardless of the hours worked,
21 prohibit them from discussing the conditions of their employment with the outside world,
22 prohibit them from having personal relationships outside of work, and allow the Defendants to
23 sexually harass the employees at work.
24

25 49. On numerous occasions, the Defendants made it clear to their employees that any dissent
26 would be punished.
27
28

1 50. As a result of this coercive system, throughout the years the Defendants were able to
2 exploit their employees while earning millions of dollars from their labor.

3 51. Nevertheless, in October 2019, the situation at the Restaurant reached a boiling point,
4 and some of the Defendants' employees decided to breach their silence and seek legal help.

5 52. Consequently, the Defendants learned that some of their employees were preparing a
6 legal action against them.

7
8 53. In response, the Defendants immediately took steps to collectively intimidate and
9 exemplarily punish their employees by a threat of a preemptive action to "deport" some of the
10 employees and separate them from their families.

11 54. Moreover, some of the Lead Plaintiffs that the Defendant suspected of participating in
12 this action were punished by the Defendants by cutting the employees' hours.

13
14 55. The majority, if not all, of the Defendants' female employees were also constantly
15 harassed and exploited sexually by Hector, Julian, and Danny.

16 56. The failure of the Defendants to pay the Lead Plaintiffs and other day-rate employees the
17 minimum wages and overtime wages legally due them is a violation of the FLSA and Nevada
18 law.

19
20 57. The inaccurate timekeeping records kept by the Defendants, or the lack thereof, related
21 to the Lead Plaintiffs and other day-rate employees is a violation of the FLSA and Nevada Law.

22 58. This Collective Action brought by the Lead Plaintiffs on behalf of themselves and all
23 other similarly situated day-rate and hourly rate employees of the Defendants arises from an
24 ongoing illegal and improper scheme perpetuated by the Defendants to systematically and
25 willfully violate the provisions of the FLSA by knowingly and deliberately failing to pay a class
26
27
28

1 of current and former employees the minimum and overtime wages legally due them under the
2 FLSA.

3 59. Defendants exercised control over the wages, hours, and working conditions of all non-
4 exempt employees, including the Lead Plaintiffs.

5 60. For the time frame relevant to this lawsuit, all decisions regarding whether or not to pay
6 all legally due wages to the Lead Plaintiffs and other day-rate employees was done with the
7 knowledge, approval, and at the direction of the Defendants.

8 61. The Defendants knew or should have known that their policies regarding payment of
9 wages as described herein violated the FLSA and Nevada statutes and are, therefore, responsible
10 for such failures.

11 62. The actions of the Defendants in failing to comply with the provisions of the FLSA and
12 Nevada law were deliberate and willful.

13 63. For the time frame relevant to this lawsuit, the illegal policies and practices described
14 herein are part of a centralized policy, practice, and scheme developed and orchestrated by the
15 Defendants for the purpose of their enrichment and benefit.

16 64. The actions of the Defendants in not paying all legally required overtime wages to the
17 Lead Plaintiffs and to those employees of the Defendants who are similarly situated have resulted
18 in economic damage to the Lead Plaintiffs and those similarly situated employees.

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20
21
22 **V.**

23
24 **COLLECTIVE ACTION ALLEGATIONS**

25 65. Lead Plaintiffs bring their First Cause of Action for violation of the FLSA as a Collective
26 Action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who
27 were, are, or will be employed by the Defendants as similarly situated, non-managerial employees
28

1 who are entitled to unpaid minimum wage and overtime in Nevada and throughout any time
2 within the applicable statute of limitations period, who have not been compensated at a rate of
3 \$7.25 per hour, and 1½ times their regular pay rate for all hours worked in excess of forty (40)
4 hours per workweek. All of these employees received or currently receive their paychecks from
5 Mariscos and La Catrina.

6
7 66. The First Cause of Action for violations of the FLSA may be brought and maintained as
8 an “opt-in” Collective Action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as
9 prospective members of the FLSA Collective Action are similarly situated to the Lead Plaintiffs
10 and have claims that are similar to the Lead Plaintiffs’ First Cause of Action.

11
12 67. Questions of law and fact common to the Collective Action as a whole include, but are
13 not limited to, the following:

- 14 a) Whether the Defendants unlawfully failed and continue to fail to pay minimum
15 wage and overtime compensation in violation of the FLSA, 29 U.S.C. §§ 201 *et*
16 *seq.*;
- 17 b) Whether the Defendants’ failure to pay minimum wage and overtime to the FLSA
18 Collective Action Plaintiffs was willful within the meaning of the FLSA;
- 19 c) Whether the Defendants failed and continue to fail to maintain accurate records of
20 actual time worked by the FLSA Collective Action Plaintiffs;
- 21 d) Whether the Defendants failed and continue to fail to record or report all actual
22 time worked by the FLSA Collective Action Plaintiffs;
- 23 e) Whether the Defendants failed and continue to fail to provide accurate wage
24 statements itemizing all actual time worked and wages earned by the FLSA
25 Collective Action Plaintiffs; and
26
27
28

1 f) Whether the Defendants' policies and practices described herein are part of a
2 centralized policy, practice, and scheme developed and orchestrated by the
3 Defendants for the purpose of denying Lead Plaintiffs and the FLSA Collective
4 Action Plaintiffs minimum wage and overtime pay.

5 68. Lead Plaintiffs and the FLSA Collective Action Plaintiffs are similarly situated and are
6 subject to the Defendants' common practice, policy- or plan of refusing to compensate all hours
7 worked and refusing to pay minimum wage and overtime in violation of the FLSA.
8

9 69. The names and addresses of the FLSA Collective Action Plaintiffs are available from the
10 Defendants, and notice should be provided to the FLSA Collective Action Plaintiffs *via* first-class
11 mail to their last known address as soon as possible.
12

13 70. As appropriate, the Lead Plaintiffs reserve the right to amend and supplement the
14 definition of the previously outlined class of similarly situated individuals as information is
15 disclosed and uncovered through future discovery.
16

17 VI.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*)**

20 71. Lead Plaintiffs repeat and incorporate the allegations contained in Paragraphs 1-70 above
21 as fully set forth herein.
22

23 72. The Defendants individually and collectively are employers as defined by the FLSA and
24 are liable to the Lead Plaintiffs and FLSA Collective Action Plaintiffs for failure to pay minimum
25 wage and overtime wages.

26 73. Lead Plaintiffs and FLSA Collective Action Plaintiffs do not rightly qualify for any of
27 the exemptions to the payment of minimum wages or overtime wages outlined in the FLSA and
28

1 should rightly be paid overtime wages for all hours worked over 40 hours in any and all
2 workweeks.

3 74. Lead Plaintiffs and FLSA Collective Action Plaintiffs routinely worked, and continue to
4 work, in excess of 40 hours during their workweek without receiving overtime compensation in
5 violation of the FLSA.

6
7 75. As a result of the illegal and improper policy of the Defendants regarding the payment of
8 minimum and overtime wages as previously outlined, the Lead Plaintiffs and FLSA Collective
9 Action Plaintiffs have suffered economic damages in an amount to be proved at trial.

10 76. The policy of the Defendants to not pay legally required minimum and overtime wages
11 to the Lead Plaintiffs and FLSA Collective Action Plaintiffs was willful, thereby entitling the
12 Lead Plaintiffs and FLSA Collective Action Plaintiffs who opt in to this case to recover damages
13 and collect overtime wages for the three years preceding November 5, 2019, in case of the Lead
14 Plaintiffs, or for three years preceding the time any FLSA Collective Action Plaintiffs opt in to
15 this case.
16

17
18 77. As provided for under federal statute, the Defendants are also liable to the Lead Plaintiffs
19 and FLSA Collective Action Plaintiffs for all other available damages, including liquidated
20 damages, penalties, and reasonable attorney fees and costs.

21 **VII.**

22 **SECOND CAUSE OF ACTION**

23 **(Retaliation in Violation of the FLSA)**

24
25 78. Lead Plaintiffs repeat and incorporate the allegations contained in Paragraphs 1-77 above
26 as fully set forth herein.
27
28

1 79. In October 2019, the Lead Plaintiffs engaged in a concerted activity to prepare the present
2 lawsuit and a parallel action for sexual discrimination.

3 80. The Defendants unlawfully threatened, discriminated against, and otherwise retaliated
4 against Plaintiffs Rodriguez, Torres, Peralta, and Flores in whole or in part for engaging in
5 protected activity under the FLSA.
6

7 81. The actions of the Defendants as described herein constitute an adverse employment
8 action designed to deter the protected activity and violate the anti-retaliation provisions of the
9 FLSA as outlined in 29 U.S.C. § 215.
10

11 82. As a result of the retaliatory actions of the Defendants, Plaintiffs Rodriguez, Torres,
12 Peralta, and Flores have suffered and will continue to suffer economic damages in an amount to
13 be proved at trial.

14 83. As a result of the retaliatory actions of Defendants, Plaintiffs Rodriguez, Torres, Peralta,
15 and Flores are entitled to collect all remedies available to them under the FLSA, including
16 liquidated damages, attorney fees and costs, and punitive damages.
17

18 **(Injunctive Relief Allegations)**

19 84. The Defendants' actions against Plaintiffs Rodriguez, Torres, Peralta and Flores pose a
20 real threat to the participation of the Lead Plaintiffs and FLSA Collective Action Plaintiffs in
21 this Action.

22 85. There is a real risk that the Defendants' retaliation will deter individuals from either
23 joining this Collective Action or cooperating in its prosecution.
24

25 86. Lead Plaintiffs and FLSA Collective Action Plaintiffs have no adequate remedy at law
26 to redress the wrongs herein alleged. Unless enjoined by this Court, the Defendants will continue
27 to violate their employees' rights to assert wage claims under the FLSA and Nevada law.
28

1 87. Unless enjoined by this Court, the Defendants' actions against Plaintiffs Rodriguez,
2 Torres, Peralta, and Flore will cause many FLSA Collective Action Plaintiffs to forgo their wage
3 claims in fear of retaliation.

4 88. Unless enjoined by this Court, the Defendants' actions against Plaintiffs Rodriguez,
5 Torres, Peralta, and Flore will also continue to deter the enforcement of the FLSA and Nevada
6 law. Any such deterrent effect, even if only temporary, will effectively eliminate claims of many
7 FLSA Collective Action Plaintiffs due to the continuous running of the statute of limitations for
8 their claims.
9

10 89. Lead Plaintiffs, therefore, seek preliminary and permanent injunctive relief against
11 Defendants enjoining them from engaging in any retaliatory actions Plaintiffs Rodriguez, Torres,
12 Peralta, Flore, and any other similarly situated employees of the Defendants pending the
13 resolution of this Collective Action.
14

15 90. In addition, the Lead Plaintiffs seek preliminary and permanent injunctive relief against
16 the Defendants, enjoining them from otherwise discriminating and retaliating against Lead
17 Plaintiffs and other similarly situated employees of the Defendants.
18

19 **VIII.**

20 **THIRD CAUSE OF ACTION**

21 **(Failure to Pay All Wages Due and Owing Upon Termination Pursuant to**
22 **NRS 608.020-608.050)**
23

24 91. Lead Plaintiffs repeat and incorporate the allegations contained in Paragraphs 1-90 above
25 as fully set forth herein.

26 92. Plaintiffs Gutierrez and Medrano bring this Third Cause of Action pursuant to NRS
27 608.040.
28

1 93. Plaintiffs Gutierrez and Medrano were discharged or resigned from their employment
2 with the Defendants, and at the time of such discharge or resignation, were owed unpaid wages
3 by the Defendants.

4 94. The Defendants have failed and refused to pay Plaintiffs Gutierrez and Medrano
5 their full earned but unpaid wages, thereby constituting a violation of NRS 608.020 or 608.030,
6 and giving rise to a claim under NRS 608.040.
7

8 95. As a result of the foregoing, Plaintiffs Gutierrez and Medrano are entitled to a judgment
9 against the Defendants for the penalty prescribed by NRS 608.040, to wit, for a sum equal to up
10 to 30 days' wages, along with interest, costs, and attorney fees.
11

12 **IX.**

13 **FOURTH CAUSE OF ACTION**

14 **(Failure to Pay Minimum Wages in Violation of Nevada Constitution)**
15

16 96. Lead Plaintiffs repeat and incorporate the allegations contained in Paragraphs 1-95 above
17 as fully set forth herein.
18

19 97. Article 15, Section 16 of the Nevada Constitution sets forth the minimum requirements
20 in the State of Nevada and further provides that “[t]he provisions of the section may not be
21 waived by agreement between an individual employee and employer” An employee
22 claiming violation of the section may bring an action against his or her employer in the courts of
23 the State to enforce the provisions of the section and shall be entitled to all remedies available
24 under the law or in equity appropriate to remedy any violation of the section, including, but not
25 limited to, back pay, damages, reinstatement, or injunctive relief. An employee who prevails in
26 any action to enforce the section shall be awarded his or her reasonable attorney fees and costs.
27
28

1 98. As alleged above, Defendants failed to pay Lead Plaintiffs any wages for many hours
2 they worked, including minimum wages.

3 99. As a result of the foregoing, Lead Plaintiffs are entitled to a judgment against the
4 Defendants for all hours that do not meet the minimum wage standard under the Nevada
5 Constitution.

6
7 **X.**

8 **FIFTH CAUSE OF ACTION**

9 **(Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016)**
10

11 100. Lead Plaintiffs repeat and incorporate the allegations contained in Paragraphs 1-
12 99 above as fully set forth herein.

13
14 101. NRS 608.140 provides that an employee has a private right of action for unpaid
15 wages.

16 102. NRS 608.016, entitled “Payment for each hour of work; trial or break-in period
17 not excepted,” states that: “An employer shall pay the employee wages for each hour the
18 employee works. An employer shall not require an employee to work without wages during a
19 trial or break-in period.”
20

21 103. Nevada Administrative Code (“NAC”) 608.115(1), entitled “Payment for time
22 worked” (NRS 607.160, 608.016, 608.250): states: “An employer shall pay an employee for all
23 time worked by the employee at the direction of the employer, including time worked by the
24 employee that is outside the scheduled hours of work of the employee.”
25

26 104. As alleged above, Defendants did not pay employees for all time worked.
27
28

105. As a result of the foregoing, Lead Plaintiffs are entitled to a judgment against the Defendants for all hours at their regular rate of pay, or at the minimum wage, and any applicable overtime premium rate, for the time worked each shift, but not paid for three years immediately preceding the filing of this complaint until the date of judgment after trial, together with attorney fees, costs, and interest as provided by law.

XI.

SIXTH CAUSE OF ACTION

(Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018)

106. Lead Plaintiffs repeat and incorporate the allegations contained in Paragraphs 1-105 above as fully set forth herein.

107. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

108. NRS 608.018 provides:

1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work.

109. Lead Plaintiffs routinely worked, and continue to work, in excess of 40 hours during their workweek without receiving overtime compensation in violation of Nevada law.

110. As a result of the illegal and improper policy of the Defendants regarding the payment of overtime wages as previously outlined, the Lead Plaintiffs have suffered economic damages in an amount to be proved at trial.

111. As a result of the foregoing, Lead Plaintiffs are entitled to a judgment against the Defendants for a payment at 1½ times the “regular rate” of pay for all hours worked in excess of eight (8) hours in a workday for those Lead Plaintiffs whose regular rate of pay did not exceed the 1½ minimum wage set by law, and premium overtime rate of 1½ their regular wage for the remaining Lead Plaintiffs who worked in excess of forty (40) hours a workweek, together with attorney fees, costs, and interest as provided by law.

XII.

SEVENTH CAUSE OF ACTION

(Civil Conspiracy)

112. Lead Plaintiffs repeat and incorporate the allegations contained in Paragraphs 1-
111 above as fully set forth herein.

113. As alleged above, the Defendants, by acting in concert, have conspired in order to discriminate and otherwise retaliate against the Lead Plaintiffs and other similarly situated employees of the Defendants in violation of the FLSA and Nevada law.

114. The Defendants entered into an unlawful agreement with each other to violate the Lead Plaintiffs' rights under the FLSA and Nevada law to prevent the Lead Plaintiffs from obtaining compensation for their work and to prevent them from asserting their rights.

115. The Defendants and their actions, collectively and/or in concert, have caused Lead Plaintiffs damages and deterred other similarly situated employees of the Defendants from asserting their rights under the FLSA and Nevada law.

- 1 D. Enter a judgment against the Defendants in an amount to be proved at trial as
2 compensation to the Lead Plaintiffs and all those similarly situated employees who opt in
3 to this Collective Action for the wages that the Defendants illegally and improperly
4 withheld in violation of the FLSA;
- 5 E. Declare that the actions of the Defendants in failing to pay overtime wages were willful
6 and that a three-year statute of limitations preceding November 5, 2019, should apply for
7 the Lead Plaintiffs' claims under the FLSA and for those similarly situated employees of
8 the Defendants who opt in to this Collective Action for collecting the wages, including
9 overtime wages properly due them;
- 10 F. Declare that the Lead Plaintiffs and all those similarly situated employees of the
11 Defendants who opt in to this Collective Action are entitled to collect liquidated damages
12 and prejudgment interest on such liquidated sums at the highest legal rate allowable;
- 13 G. Award the Lead Plaintiffs and all those similarly situated employees who opt in to this
14 Collective Action their reasonable attorney fees, expenses, and costs, and all other
15 remedies and recoveries available to them under the FLSA;
- 16 H. Declare that the actions of the Defendants in discriminating against Plaintiffs Rodriguez,
17 Torres, Peralta, and Flores as described above violate the anti-retaliation provisions of the
18 FLSA;
- 19 I. Enjoin the Defendants from otherwise discriminating and retaliating against the Lead
20 Plaintiffs and other similarly situated employees of the Defendants.
- 21 J. Order that the Defendants pay Lead Plaintiffs compensatory damages and punitive
22 damages sufficient to punish Defendants and deter retaliatory conduct in the future;
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1 K. Award the Lead Plaintiffs interest on all sums awarded in judgment at the highest legal
2 rate allowable from the date of judgment until paid;

3 L. Award Plaintiffs Gutierrez and Medrano penalties for their unpaid wages under NRS
4 608.040;

5 M. Retain jurisdiction over this action to ensure full compliance with the Court's orders and
6 require the Defendants to file such reports as the Court deems necessary to evaluate such
7 compliance;
8

9 N. For such other further relief as the Court deems just and proper under the circumstances.

10 DATED this 5th day of November, 2019.
11

12 **The Medrala Law Firm, Prof. LLC**
13 /s/ Jakub P. Medrala

14 **JAKUB P. MEDRALA, ESQ.**
15 Nevada Bar No. 12822
16 1091 S. Cimarron Rd., Suite A-1
17 Las Vegas, NV 89145
18 702-475-8884
19 jmedrala@medralaw.com
20 *Attorney for Plaintiffs*
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28

CONSENT TO BECOME PARTY PLAINTIFF
UNDER
FEDERAL FAIR LABOR STANDARDS ACT

I am an employee currently or formerly employed by Mariscos El Puerto, Inc., La Catrina, LLC, La Catrina Entertainment, LLC, Manuela Hernandez, Julian Hernandez, Hector Moreno, and/or Danny Henandez.

I consent to be a plaintiff in this action to collect unpaid overtime wages. I agree that I am bound by the terms of the ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT signed by the Named Plaintiffs in this case.

Viridiana Ramirez

Full Legal Name (Print)


Signature

10/21/19

Date

CONSENT TO BECOME PARTY PLAINTIFF
UNDER
FEDERAL FAIR LABOR STANDARDS ACT

I am an employee currently or formerly employed by Mariscos El Puerto, Inc., La Catrina, LLC, La Catrina Entertainment, LLC, Manuela Hernandez, Julian Hernandez, Hector Moreno, and/or Danny Henandez.

I consent to be a plaintiff in this action to collect unpaid overtime wages. I agree that I am bound by the terms of the ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT signed by the Named Plaintiffs in this case.

Adriana Torres Q.

Full Legal Name (Print)

Adriana Torres

Signature

10-21-19

Date

CONSENT TO BECOME PARTY PLAINTIFF
UNDER
FEDERAL FAIR LABOR STANDARDS ACT

I am an employee currently or formerly employed by Mariscos El Puerto, Inc., La Catrina, LLC, La Catrina Entertainment, LLC, Manuela Hernandez, Julian Hernandez, Hector Moreno, and/or Danny Henandez.

I consent to be a plaintiff in this action to collect unpaid overtime wages. I agree that I am bound by the terms of the ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT signed by the Named Plaintiffs in this case.

Brenda Karla Gdonela Reyes Medrano

Full Legal Name (Print)

BRENDA REYES

Signature

10/18/2019.

Date

CONSENT TO BECOME PARTY PLAINTIFF
UNDER
FEDERAL FAIR LABOR STANDARDS ACT

I am an employee currently or formerly employed by Mariscos El Puerto, Inc., La Catrina, LLC, La Catrina Entertainment, LLC, Manuela Hernandez, Julian Hernandez, Hector Moreno, and/or Danny Henandez.

I consent to be a plaintiff in this action to collect unpaid overtime wages. I agree that I am bound by the terms of the ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT signed by the Named Plaintiffs in this case.

Ayle Dzucena perez

Full Legal Name (Print)

Ayle
Signature

10-18-2019
Date

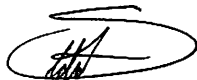
CONSENT TO BECOME PARTY PLAINTIFF
UNDER
FEDERAL FAIR LABOR STANDARDS ACT

I am an employee currently or formerly employed by Mariscos El Puerto, Inc., La Catrina, LLC, La Catrina Entertainment, LLC, Manuela Hernandez, Julian Hernandez, Hector Moreno, and/or Danny Henandez.

I consent to be a plaintiff in this action to collect unpaid overtime wages. I agree that I am bound by the terms of the ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT signed by the Named Plaintiffs in this case.

Salvador Vladimir Jimenez Flores

Full Legal Name (Print)



Signature

October 17 2019

Date

CONSENT TO BECOME PARTY PLAINTIFF
UNDER
FEDERAL FAIR LABOR STANDARDS ACT

I am an employee currently or formerly employed by Mariscos El Puerto, Inc., La Catrina, LLC, La Catrina Entertainment, LLC, Manuela Hernandez, Julian Hernandez, Hector Moreno, and/or Danny Henandez.

I consent to be a plaintiff in this action to collect unpaid overtime wages. I agree that I am bound by the terms of the ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT signed by the Named Plaintiffs in this case.

Enka Socorro Valle Peralta

Full Legal Name (Print)

Enka Valle
Signature

10/17/19

Date

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